

Appl. No. : **09/700,130**
Filed : **December 18, 2001**

REMARKS

The instant application is a United States national phase patent application of PCT Application No. PCT/DK99/00258. The Restriction Requirement mailed June 14, 2005 divides claims 1-89, as originally filed in above-referenced PCT application, into seven different groups. However, subsequent to the filing of the original claim set and substantially prior to the mailing of the instant Restriction Requirement, two preliminary amendments were filed. A first preliminary amendment was filed on November 7, 2000, which amended originally-filed claims 1-89 and added new claims 90-99. On September 4, 2003, a second preliminary amendment was filed, which canceled claims 1-99 and added claims 100-165. On or about July 6, 2005, Applicants' representative notified the Examiner that the Restriction Requirement mailed June 14, 2005 was drawn to canceled claims and requested that a new Restriction Requirement be provided. The Examiner agreed that the Restriction Requirement mailed June 14, 2005 was drawn to canceled claims but suggested that the Applicants respond to that Restriction Requirement based on new claim groups, which were provided to Applicants' representative over the telephone. Those claim groups are reproduced below as follows:

- Group I comprising claims 100-120
- Group II comprising claims 130-134
- Group III comprising claims 128 and 129
- Group IV comprising claims 140-165
- Group V comprising claims 135-139
- Group VI comprising claims 121-125
- Group VII comprising claims 126 and 127

Based on the above-listed claims groups, as provided via the telephone by the Examiner, Applicants provisionally elect the claims of Group II (claims 130-134) with traverse. In particular, as set forth below, Applicants traverse the division of the claims of Group II from Group I (claims 100-120) and Group IV (claims 140-165).

The claims of Group I, II and IV are related by the common feature that they all involve a gene coding for a cytotoxin polypeptide of a proteic killer gene system. The claims of Groups I, II and IV can reasonably be examined together without an undue burden because a complete search of the subject matter of the claims of Group II, as related to the gene coding for a

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cytotoxin polypeptide of a proteic killer gene system, includes the subject matter of the claims of Groups I and IV. For example, claim 130, which is in Group II, and which is drawn to a method of confining an extrachromosomal replicon to a recombinant microbial cell population, includes the steps of (i) introducing a gene coding for a cytotoxin polypeptide of a proteic killer gene system into a cell, (ii) introducing an extrachromosomal replicon to be confined into the cell, wherein the extrachromosomal replicon comprises a gene of interest and a gene coding for an antidote to the cytotoxin protein, and (iii) cultivating the cell under conditions whereby the cytotoxin is expressed so that daughter cells that do not receive a copy of the extrachromosomal replicon comprising the antidote are killed. The independent claim of Group I, claim 100, which is drawn to a method of conditionally controlling the survivability of a recombinant microbial cell population, includes the step of providing cells of a recombinant cell population with a gene coding for a cytotoxin polypeptide of a proteic killer system, wherein the gene is operably linked to a regulatable, regulatory DNA sequence such that expression of the cytotoxin polypeptide occurs when the cells are present in an undesired environment. Performing a search of the subject matter set forth in step (i) of claim 130 includes searching the step of introducing a gene coding for a cytotoxin polypeptide of a proteic killer gene system into a cell, both when that gene is under the control of a regulatory DNA sequence and when it is not. The single method step of claim 100 necessitates only a search of subject matter related to providing cells with a gene coding for a cytotoxin polypeptide of a proteic killer system, wherein such gene is operably linked to a regulatory DNA sequence. Thus, a search of the a subject matter recited in step (i) of claim 130 would also include the subject matter of the recited method step of claim 100.

A search of the subject matter of step (i) of claim 130 would also be sufficient to search the claimed compositions as set out in the claims of Group IV. For example, independent claim 140 recites a recombinant cell comprising a gene coding for a cytotoxin polypeptide of a proteic killer gene system, provided that when the cell is *E. coli*, the gene is not derived from *E. coli* or a prophage thereof. A search for materials describing the step of introducing a gene coding for a cytotoxin polypeptide of a proteic killer gene system, the subject matter of step (i) of claim 130, would necessarily describe the recombinant cells that are produced by such method, including *E. coli* cells that do not include a gene coding for a cytotoxin polypeptide derived from *E. coli* or a

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prophage thereof. As such, searching the subject matter of the claims of Group II would also provide the search results for the claims of Group IV.

In view of the foregoing remarks, Applicants respectfully request that the Examiner withdraw the requirement for restriction as pertaining to claim Groups I, II and IV and examine these claims together in the instant application.

CONCLUSION


Applicants believe that all outstanding issues in this case have been resolved and that the present claims are in condition for allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is invited to contact the undersigned at the telephone number provided below in order to expedite the resolution of such issues.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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